

**Countywide Goal 4:** Provide necessary infrastructure and public services to accommodate population growth and new development without undue impacts on the quality, quantity and cost of service to existing residents.

**Countywide Policy 4.1:** Encourage development that will minimize or avoid additional costs to existing taxpayers.

**Countywide Policy 4.2:** Consider cumulative impacts of development.

- The applicant has requested a variance from the phasing limitations in the Subdivision Regulations. Although it is difficult to determine whether all impacts of the subdivision on the primary review criteria will have been mitigated 20 years into the future, reviewing the overall development plan for a long term phased subdivision allows the County to consider the cumulative impacts of development as compared to limiting review to a series of smaller subdivisions that would have to be reviewed individually. Mitigating conditions will protect the public and future land owners from taking on the costs of this development.

Conclusions of Law:

1. Provisions in the zoning district standards do not apply.
2. With the mitigating conditions, provisions in the Growth Policy appear to support granting the variance request.

**E. The variance will not cause a substantial increase in public costs.**

Findings of Fact:

1. Mitigating conditions will prevent impacts of granting the variance on public costs. (Conditions 1, 2, 3, and 4)
2. By reviewing the entire project in phases instead of 33 individual subdivisions, potential costs to the public are easier to evaluate.

Conclusion of Law:

With the recommended conditions, impacts of granting the variance on public costs have been addressed.

**VARIANCE REQUEST #2**

*(Staff Note on New Information: Based on comments from David Ohnstad that were considered new information by the BCC, staff is recommending conditional approval of Variance #2, which would allow for a temporary emergency access. When the Level of Service on Lower Woodchuck Road falls below LOS "A", the emergency route shall be constructed to Mountain View Drive and Mountain View Drive improved to meet the new road standards. Prior to final plat approval of Phase 19 or the first phase east of the main drainage, the emergency access shall be improved to be a primary access. The applicant shall improve Mountain View Drive and Eight Mile Creek Road from Lower Woodchuck Road to Mountain View Drive to meet the road standards and the emergency access only barricade removed.)*

The applicant has requested a variance from Section 5-4-4(d) of the Ravalli County Subdivision Regulations, which requires that roads in a new development be connected to a right of way or easement in adjacent platted areas to allow for proper inter-neighborhood traffic flow. The Section further states that if adjacent lands are vacant or un-platted, the road easement shall be extended and the road developed to the boundary of the proposed subdivision, where appropriate.

The applicant is proposing three accesses off Lower Woodchuck Road and one emergency access off Mountain View Drive. One existing road easement connecting to the north is also proposed. The applicant is requesting that no other road or road easement connections be required.



The Riverview Orchards Subdivision is adjacent to the southern boundary of Aspen Springs and, according to the preliminary plat, there are four road easements that connect the Riverview Orchards Subdivision to Aspen Springs. One connection from Aspen Springs to the Riverview Orchards Subdivision is required. The emergency access proposed off Mountain View Drive will not provide for "proper inter-neighborhood traffic flow" because it will only be used in emergency situations.

The four potential connections to the south are Cottonwood Drive, Meadow View Drive, Riverview Drive, and Mountain View Drive. Mountain View Drive, Meadow View Drive, and Cottonwood Drive do not have 60-foot wide easements, and there may not be legal access on Cottonwood Drive or Riverview Drive. Potential wetlands and steep slopes also pose challenges to a southern connection; however the application packet shows the emergency access connection with Mountain View Drive to be 7%.

### **Compliance with Variance Review Criteria**

#### **A. The granting of the variance will not be substantially detrimental to the public health, safety or general welfare or injurious to other adjoining properties.**

##### **Findings of Fact:**

1. At build-out, Aspen Springs is proposed to have a maximum of 671 units and contribute approximately 5,866 average daily trips to the road system (application). All of this traffic is proposed to be funneled onto Lower Woodchuck Road.
2. The applicant is proposing an emergency access off Mountain View Drive. The extension of Madison Drive south to the southern boundary of the subdivision is proposed to meet the new road standards and a knock-down gate is proposed. No improvements to Mountain View Drive are proposed.
3. In emails dated June 27, 2006 (Exhibit A-6) and August 17, 2006 (Exhibit A-36), David Ohnstad makes the following recommendations regarding a southern connection:
  - An emergency route through Mountain View Drive should be constructed when the Level of Service (LOS) on Lower Woodchuck Road decreases below LOS "A".
  - The internal roads leading to Mountain View Drive and Mountain View Drive should be improved to meet the new road standards when the emergency route is constructed.
  - The emergency barricade should not be a locked gate.
  - If the portion of Eight Mile Creek Road from Eastside Highway to Lower Woodchuck Road and the portion of Lower Woodchuck Road leading to the subdivision are improved to meet the new road standards prior to the final plat of Phase 1, then the portion of Eight Mile Creek Road from Lower Woodchuck Road to Mountain View Drive would not need to be improved.
4. To mitigate impacts on public health and safety, when the LOS for Lower Woodchuck Road falls below LOS "A", the emergency route, which includes the internal roads leading to Mountain View Drive and Mountain View Drive, shall be improved to meet the new road standards, as amended August 4, 2005 prior to the final plat approval of the next phase to be approved after the LOS has dropped below LOS "A" (Condition 5).
5. Phases 19 through 33, approximately half of the total proposed lots, are located in the southeastern and eastern portions of subdivision. As proposed, there would be no primary access through Mountain View Drive. Traffic would be routed across the subdivision to Lower Woodchuck Road causing internal congestion.
6. As proposed, the people living along Lower Woodchuck Road will experience the most traffic. If the traffic was dispersed to a road network with multiple routes to the public road system, the impacts of the Aspen Springs traffic would be equally dispersed throughout the Riverview



Orchards Subdivision and therefore be less injurious to the property owners along Lower Woodchuck Road.

7. In the event of a road blockage on Lower Woodchuck Road, such as road maintenance or an emergency situation, there would be no alternative route for entering and exiting the subdivision without an access route to the south. The intent of the Subdivision Regulations is to optimize traffic safety and efficient traffic movement, which is problematic when you have all standard (non-emergency use only) access points on a single road, Lower Woodchuck Road. At this time Lower Woodchuck dead ends to the north. In regards to other road safety issues, the County Attorney's Office has advised us that to any extent that there is a finding of negative impact on review criteria from the design of this subdivision, the subdivision application should not be approved unless sufficient mitigation to minimize the potential dangers can be done. Approval without requiring sufficient mitigation or approval where mitigation is not possible to provide for adequate public and emergency access, exposes the County to significant liability in the event of a public emergency in the subdivision.
8. To mitigate impacts to public health and safety and adjoining landowners, the emergency route shall be improved to be a primary route prior to the final plat approval of Phase 19 or the first phase east of the main drainage. The applicant shall improve Mountain View Drive (the change from emergency access to primary access may require more improvements than are required with Condition 5) and Eight Mile Creek Road from Lower Woodchuck Road to Mountain View Drive to meet County standards and remove the emergency access only barricade prior to the final plat approval of Phase 19 (Condition 6). Since Mountain View Drive is a private road, a Road Maintenance Agreement for this road would be required prior to the final plat approval of the first phase east of the main drainage.
9. To mitigate impacts on public health and safety, the internal subdivision road connecting to Mountain View Drive shall be named Mountain View Drive for E-911 purposes (Condition 7).
10. According to Section 8-1-11 of the Ravalli County Subdivision Regulations, variances will expire unless the final plat of the first phase is filed within 30 months of subdivision approval.

Conclusions of Law:

1. With a temporary emergency access for Phases 1 through 18, impacts to public health and safety will be mitigated.
2. With a primary access through Mountain View Drive at Phase 19 or prior to the final plat approval of the first phase east of the main drainage, impacts to public health, safety, general welfare, and adjoining properties will be mitigated.

**B. The conditions on which the request for a variance is based are unique to the property on which the variance is sought and are not applicable generally to other property.**

Finding of Fact:

Aspen Springs is a proposed subdivision of 643 lots (671 units) on 392 acres, with a platted subdivision adjacent to the south property boundary and only three accesses onto one County-maintained road.

Conclusions of Law:

1. These are the conditions that warrant road connectivity.
2. The conditions on which the variance request is based are not unique to the property.

**C. Physical conditions, such as topography or parcel shape, prevent the applicants from meeting the strict letter of these regulations. These conditions shall not result from the past actions of the land's current or previous owner(s).**

Finding of Fact:

There are steep slopes below the bench along the southern boundary of Aspen Springs.



Conclusion of Law:

There are some topographic limitations that may restrict the applicant from building a road connecting to the south, but the applicant has successfully created road plans for an emergency connection to Mountain View Drive that is at 7% grade.

**D. The variance will not in any manner vary the provision of the zoning regulations or the Growth Policy.**

Findings of Fact:

1. Zoning does not apply to this property.
2. Relevant countywide provisions in the Ravalli County Growth Policy are outlined below. Provisions of the Ravalli County Growth Policy are followed by an analysis (bulleted points) of the variance request against these provisions.

**Countywide Goal 4:** Provide necessary infrastructure and public services to accommodate population growth and new development without undue impacts on the quality, quantity and cost of service to existing residents.

**Countywide Policy 4.1:** Encourage development that will minimize or avoid additional costs to existing taxpayers.

**Countywide Policy 4.2:** Consider the cumulative impacts of development.

**Countywide Policy 4.5:** Developers will be responsible for providing the infrastructure necessary within the development such as community water, sewage treatment and roads. A system of "nexus and proportionality" will govern external infrastructure costs attributable to the developer.

- A development of this size and scope should not only have a secondary, emergency access, but should provide road connectivity for efficient traffic flow when the second half of the subdivision is developed.
- To ensure the proper infrastructure is in place for efficient traffic flow and public health and safety, an emergency route shall be constructed via Mountain View Drive when the LOS for Lower Woodchuck Road falls below LOS "A" and a primary route shall be constructed prior to the final plat of Phase 19 or the first phase east of the main drainage (Conditions 5 and 6).

Conclusions of Law:

1. Zoning does not apply.
2. With the mitigating conditions, the Growth Policy supports the granting of the variance request.

**E. The variance will not cause a substantial increase in public costs.**

Findings of Fact:

1. Aspen Springs will add an estimated 5,866 trips per day. The applicant is proposing primary access onto Lower Woodchuck Road, a County-maintained road and emergency access via Mountain View Drive.
2. If the variance request is approved as requested, the traffic on Lower Woodchuck Road will degrade the road much faster than if the traffic were dispersed to a second primary route to the south.
3. To ensure that there are no substantial increases in public costs, a primary route shall be constructed prior to the final plat of Phase 19 or the first phase east of the main drainage (Condition 6).



#### Conclusion of Law:

With the mitigating condition, there will not be a substantial increase in public costs.

#### VARIANCE REQUEST #3

*(Staff Note on New Information: Staff determined the new information does not affect Variance Request #3; therefore, no changes have been made.)*

The applicant has requested a variance from Section 5-2-2(a)(13) of the Ravalli County Subdivision Regulations, for relief from the requirement that a no-build zone within 100 feet of the high pressure gas line traversing the western portion of Aspen Springs be shown on the final plat.

#### Compliance with Variance Review Criteria

##### **A. The granting of the variance will not be substantially detrimental to the public health, safety or general welfare or injurious to other adjoining properties.**

##### Findings of Fact:

1. A high pressure gas line with an 8.0-inch diameter, owned and operated by NWE, traverses the property. The gas line is within a 50-foot public utility easement.
2. Finding 5-2-1(4) of the Subdivision Regulations in place at the time of the application submittal states that a 50-foot wide setback from the high pressure gas line would reduce impacts to public health and safety and Section 5-2-2(a)(13) of the Subdivision Regulations states that land within 100 feet of a high pressure gas line shall be a no-build zone on the final plat. Finding 5-2-1(4) and Section 5-2-2(a)(13) were not consistent. The Subdivision Regulations were amended August 4, 2005 to require a 25-foot setback from high pressure gas lines, but since Aspen Springs was submitted prior to this date, the 100-foot setback applies.
3. The NWE Right-of-Way Development Provisions state: "No permanent structure will be built within 25 feet of [NorthWestern Energy's] pipeline without prior approval from [NorthWestern Energy]" (Exhibit A-20).
4. The applicant is proposing to show a 50-foot wide no-build zone centered on the high pressure gas line on the final plat, as shown on the preliminary plat.
5. To mitigate impacts on public health and safety, a 50-foot no-build zone centered on the high pressure gas line shall be shown on the final plat of each applicable phase, as proposed on the preliminary plat, and a notification of the high pressure gas line shall be included in the Notifications Document (Conditions 8 and 10).
6. In a letter from NWE to the developer, NWE stated that they had concerns about the street crossings over the high pressure gas line (application). In another letter, NWE stated they also have concerns about utility crossing and drainfields in close proximity to the gas line (Exhibit A-23). In an email dated July 12, 2006 (Exhibit A-32), Mr. Darkenwald states that after his concerns are met he will submit a letter stating that Aspen Springs will not pose a greater risk to public health and safety than what existed prior to development. To mitigate impacts on public health and safety, the applicant shall submit a letter from NorthWestern Energy stating that the development, including street and utility crossings of the high pressure gas line and drainfields in close proximity, will not pose a greater risk to public health and safety than what existed on the property prior to development prior to the final plat approval of the first phase. The letter shall also state that the Right-of-Way Development Provisions document has been signed by the developer (Condition 9).
7. According to Section 8-1-11 of the Ravalli County Subdivision Regulations, variances will expire unless the final plat of the first phase is filed within 30 months of subdivision approval.



Conclusion of Law:

With the mitigating conditions of approval, impacts of granting the variance on public health and safety will be reduced.

**B. The conditions on which the request for a variance is based are unique to the property on which the variance is sought and are not applicable generally to other property.**

Finding of Fact:

The Ravalli County Subdivision Regulations were amended August 4, 2005 from 100-foot setbacks from the gas line to 25-foot setbacks. The Aspen Springs application was submitted prior to the amendment.

Conclusion of Law:

The conditions upon which the variance is requested are unique to the subject property.

**C. Physical conditions, such as topography or parcel shape, prevent the applicant from meeting the strict letter of these regulations. These conditions shall not result from the past actions of the land's current or previous owner(s).**

Finding of Fact:

There is sufficient area on the property for 100-foot setbacks from the gas line and topography does not affect the placement of easements.

Conclusion of Law:

There do not appear to be physical conditions preventing the applicant from meeting the Subdivision Regulations.

**D. The variance will not in any manner vary the provision of the zoning regulations or the Growth Policy.**

Findings of Fact:

1. There is no zoning on this property.
2. The goals and policies in the Ravalli County Growth Policy do not appear to address this variance or related public health and safety issues.

Conclusion of Law:

Provisions in the zoning and the Growth Policy do not appear to apply to this request.

**E. The variance will not cause a substantial increase in public costs.**

Finding of Fact:

If the high pressure gas line was ruptured, there may be costs associated with providing emergency services. To lessen the chance of a rupture, the 50-foot no-build zone on the preliminary plat shall be shown on the final plat, a notification of the gas line shall be included in the Notifications Document in accordance with NWE policies, and the applicant shall provide a letter from NWE stating the development, including street and utility crossings of the high pressure gas line and drainfields in close proximity to the gas line will not pose a greater risk to public health and safety than what existed on the property prior to development (Conditions 8, 9, and 10).

Conclusion of Law:

With the recommended conditions of approval, impacts on public costs will be reduced.



#### **VARIANCE REQUEST #4**

*(Staff Note on New Information: Staff determined the new information does not affect Variance Request #4; therefore, no changes have been made.)*

The applicant requested a variance from Section 5-2-2(b)(2) of the Ravalli County Subdivision Regulations, for relief from the requirement that "each lot have an area sufficient for a practical building site of at least 7,500 square feet..." because there are 152 lots proposed within Aspen Springs that will not meet this requirement. The proposed minimum lot size is 3,972 square feet and the average lot size is 10,460 square feet.

#### **Compliance with Review Criteria**

##### **A. The granting of the variance will not be substantially detrimental to the public health, safety or general welfare or injurious to other adjoining properties.**

###### **Findings of Fact:**

1. The proposal is to vary from the minimum building area of 7,500 square feet as required in the Regulations for 152 lots within Aspen Springs. The proposed minimum lot size is 3,972 square feet, with an overall average lot size of 10,460 square feet.
2. The minimum lot size within the subdivision is larger than the traditional lots platted in most existing towns, which are typically 25 to 30 feet wide by 125 feet deep.
3. The application states that smaller lots within this subdivision will have detached garages accessed via an alley, which can be considered safer because this allows for access from both the front and rear of the lot and the residents will be accessing their homes via alleys instead of the busier streets. No parking will be allowed in the alleys.
4. To mitigate impacts on public health, safety and general welfare by having buildings too close to one another such that fire could spread easily between structures a minimum five-foot wide side yard setback shall be included in the covenants filed with the final plat (Condition 11). This minimum setback is based on a survey of side yard setbacks for zoning districts in other jurisdictions that have a minimum lot size between 5,000 and 10,000 square feet.
5. According to Section 8-1-11 of the Ravalli County Subdivision Regulations, variances will expire unless the final plat of the first phase is filed within 30 months of subdivision approval.

###### **Conclusion of Law:**

With the mitigating condition, granting the variance will not result in adverse impacts on public health and safety or be injurious to adjoining landowners.

##### **B. The conditions on which the request for a variance is based are unique to the property on which the variance is sought and are not applicable generally to other property.**

###### **Findings of Fact:**

1. The application states that the proposal is unique because it offers a variety of housing types and lot sizes, which will provide opportunities for homeownership for a broad range of residents. The smaller lots will allow for more affordable market rate housing.
2. The variance does not appear to be based on unique features of the property.
3. The Montana Board of Housing has indicated that affordable housing is difficult to find in this area, in large part due to the cost of land and infrastructure (Exhibit A-18). Their typical home buyer is a hard working Montana family with an average annual income of about \$35,000. They note that "all rapidly growing communities need to consider higher density housing developments on communal water and sewer systems to offer the only opportunity for new construction homes to fit the incomes of many Montana Board of Housing buyers."



Conclusion of Law:

The conditions upon which the variance is proposed are not unique to the subject property; however, they are unique to the proposal.

**C. Physical conditions, such as topography or parcel shape, prevent the applicant from meeting the strict letter of these regulations. These conditions shall not result from the past actions of the land's current or previous owner(s).**

Findings of Fact:

1. The application states the ridgelines and bowl features of the property, as well as its horizontal and vertical separation from the neighboring Riverview Orchards make this property unique and these features allow for clustering development away from the ridgelines and buffering the neighboring properties. The proposal is also focused on clustering development on smaller lots to allow for large tracts of open space. The applicant also argues that the higher density development allows for more amenities. A development that met the minimum building area on each lot would result in less open space and potentially fewer neighborhood amenities.
2. No physical conditions have been identified that prevent the applicant from meeting the strict letter of these regulations.

Conclusion of Law:

The physical conditions of the property do not prevent the applicant from meeting the strict letter of the regulations; however, it appears it would be more difficult to achieve the project goals with the minimum building area of 7,500 square feet.

**D. The variance will not in any manner vary the provisions of the zoning regulations or the Growth Policy.**

Findings of Fact:

1. The property is not zoned.
2. The variance will not vary provisions in the Growth Policy; however some general goals and policies supporting voluntary open space programs and provision of quality affordable housing may support granting the variance request.

Conclusion of Law:

Zoning does not apply and the Growth Policy may support granting the variance request.

**E. The variance will not cause a substantial increase in public costs.**

Findings of Fact:

The variance will not result in increases to public costs and the application argues granting the variance will actually increase the tax base for the County.

Conclusion of Law:

Granting the variance will not increase public costs.

**VARIANCE REQUEST #5**

*(Staff Note on New Information: Staff determined the new information does not affect Variance Request #5; therefore, no changes have been made.)*

The applicant requested a variance from Section 5-2-2(a)(7) of the Ravalli County Subdivision Regulations to allow for 6 flag lots (B110, B126, B133, B134, E93, E126) that if not designed as flag lots would likely have resulted in additional road construction.



## **Compliance with Review Criteria**

### **A. The granting of the variance will not be substantially detrimental to the public health, safety or general welfare or injurious to other adjoining properties.**

#### **Findings of Fact:**

1. The applicant requested a variance from Section 5-2-2(a)(7) of the Ravalli County Subdivision Regulations to allow for 6 flag lots (B110, B126, B133, B134, E93, E126) within the subdivision, and consequently has avoided additional roadway construction that would likely have been needed to accommodate a "non-flag lot design".
2. The proposed flag lots all have "poles" shorter than 150 feet in length, which is the distance most fire districts in the Valley are willing to travel before they require an 18 to 20 foot wide compacted all weather surface instead of a standard driveway to provide safe access, particularly for emergency services providers.
3. No impacts to adjoining property owners are anticipated from the granting of the variance request.
4. According to Section 8-1-11 of the Ravalli County Subdivision Regulations, variances will expire unless the final plat of the first phase is filed within 30 months of subdivision approval.

#### **Conclusion of Law:**

No impacts to public health and safety or general welfare or injury to adjoining property owners are anticipated from the granting of the variance request.

### **B. The conditions on which the request for a variance is based are unique to the property on which the variance is sought and are not applicable generally to other property.**

#### **Findings of Fact:**

1. The application states the design that includes flag lots will help to further preserve the natural features of the site without the extra site disturbance that would be required through additional road construction.
2. The application does not identify conditions upon which the variance is requested that are unique to the property.

#### **Conclusion of Law:**

The conditions upon which the variance is proposed are not unique to the subject property; however, they are somewhat unique to the proposal.

### **C. Physical conditions, such as topography or parcel shape, prevent the applicant from meeting the strict letter of these regulations. These conditions shall not result from the past actions of the land's current or previous owner(s).**

#### **Findings of Fact:**

1. The application states the rolling topography of the site and the natural features encourage the use of flag lots and these lots help prevent excessive infrastructure development and costs.
2. No physical conditions have been identified that prevent the applicant from meeting the strict letter of these regulations.

#### **Conclusion of Law:**

The physical conditions of the property do not prevent the applicant from meeting the strict letter of the regulations.



**D. The variance will not in any manner vary the provisions of the zoning regulations or the Growth Policy.**

Findings of Fact:

1. The property is not zoned.
2. The provisions of the Growth Policy do not apply to the variance request.

Conclusion of Law:

Neither zoning nor the Growth Policy applies.

**E. The variance will not cause a substantial increase in public costs.**

Finding of Fact:

No increases in public costs are anticipated from the granting of the variance request.

Conclusion of Law:

Granting the variance will not increase public costs.

**VARIANCE REQUEST #6**

*(Staff Note on New Information: Staff determined the new information does not affect Variance Request #6; therefore, no changes have been made.)*

The applicant has requested a variance from Chapter 5, Article 4 of the Ravalli County Subdivision Regulations, to allow all of the internal subdivision roads to meet the new road standards, as amended August 4, 2005, instead of the standards in place at the time of subdivision application submittal.

**Compliance with Variance Review Criteria**

**A. The granting of the variance will not be substantially detrimental to the public health, safety or general welfare or injurious to other adjoining properties.**

Findings of Fact:

1. The developer is proposing an internal road network to access the lots within the subdivision. The developer is requesting a variance from the road standards in place at the time of application submittal and is instead proposing to construct the roads to the new road standards, as amended August 4, 2005, without any design exceptions.
2. The road plans have been approved under the new road standards by the Road Department and the Road Department recommends approval of this variance (Exhibit A-3). To mitigate impacts on public health and safety, the applicant shall construct the internal roads to meet County Standards, as amended August 4, 2005 (Condition 12).
3. According to Section 8-1-11 of the Ravalli County Subdivision Regulations, variances will expire unless the final plat of the first phase is filed within 30 months of subdivision approval.

Conclusion of Law:

With the mitigating condition, the granting of the variance will not have impacts on public health, safety, and general welfare or adjoining properties.

**B. The conditions on which the request for a variance is based are unique to the property on which the variance is sought and are not applicable generally to other property.**

Finding of Fact:

The Ravalli County Subdivision Regulations were amended August 4, 2005, and the Aspen Springs application was submitted prior to the amendments to the road standards.



Conclusion of Law:

The conditions upon which the variance is proposed are unique to the property.

- C. Physical conditions, such as topography or parcel shape, prevent the applicants from meeting the strict letter of these regulations. These conditions shall not result from the past actions of the land's current or previous owner(s).**

Finding of Fact:

There are slopes greater than 25% on the property, but it would not prevent the applicant from building the internal roads to the road standards in place at time of application submittal.

Conclusion of Law:

No physical or topographic limitations have been identified that would restrict the applicant from meeting the road standards in place at the time of application submittal.

- D. The variance will not in any manner vary the provision of the zoning regulations or the Growth Policy.**

Findings of Fact:

1. Zoning does not apply to this property.
2. Relevant countywide provisions in the Ravalli County Growth Policy are outlined below. Provisions of the Ravalli County Growth Policy are followed by an analysis (bulleted points) of the variance request against these provisions.

**Countywide Goal 4:** Provide necessary infrastructure and public services to accommodate population growth and new development without undue impacts on the quality, quantity and cost of service to existing residents.

**Countywide Policy 4.5:** Developers will be responsible for providing the infrastructure necessary within the development such as community water, sewage treatment and roads. A system of "nexus and proportionality" will govern external infrastructure costs attributable to the developer.

- New provisions in the Subdivision Regulations were adopted August 4, 2005, while this proposal was involved in the subdivision process.
- To ensure that the developer will be providing the necessary infrastructure, the applicant shall construct all internal roads to meet County Standards, as amended August 4, 2005 (Condition 12).

Conclusions of Law:

1. Zoning does not apply.
2. With the mitigating conditions, the Growth Policy supports granting the variance request.

- E. The variance will not cause a substantial increase in public costs.**

Finding of Fact:

The applicant will be responsible for constructing the roads to meet the current Subdivision Regulations (Condition 12).

Conclusion of Law:

There will not be an increase to public costs.

**VARIANCE REQUEST #7**

*(Staff Note on New Information: Staff determined the new information does not affect Variance Request #7; therefore, no changes have been made.)*



The applicant has requested a variance from Chapter 5, Article 4 of the Ravalli County Subdivision Regulations, to allow the developer to reconstruct the gravel portion of Lower Woodchuck Road to meet the road standards, as amended August 4, 2005 and pay a portion of the cost to improve the paved portion of Lower Woodchuck Road to meet County Standards. If a recovery contract was in place, the developer is willing to improve the entire portion of Lower Woodchuck Road leading to the subdivision. The design exception is to lower the design speeds on the curves where Lower Woodchuck Road intersects with Slack Lane and Sapphire Lane. (Staff Note: The Board of County Commissioners recently decided that design exceptions are independent of variances, so the Road and Bridge Department will be reviewing design exceptions.)

#### **Compliance with Variance Review Criteria**

**A. The granting of the variance will not be substantially detrimental to the public health, safety or general welfare or injurious to other adjoining properties.**

**Findings of Fact:**

1. Based on the Trip Generation 7<sup>th</sup> Edition, Aspen Springs will add an estimated 5,866 trips per day to Lower Woodchuck Road (application).
2. Lower Woodchuck Road is currently classified as a Major Local Access – Agricultural Access roadway. From Eight Mile Creek Road to Slack Lane, Lower Woodchuck Road is paved, but does not meet County Standards. From Slack Lane north to the subdivision, Lower Woodchuck Road is gravel and does not meet County Standards. There are two curves located where Lower Woodchuck Road intersects with Slack Lane and the proposed Sapphire Lane that are close to 90 degrees.
3. The Subdivision Regulations require that the entire length of Lower Woodchuck Road be improved to meet the Standards in place at the time of application submittal, which was prior to the August 4, 2005 amendments.
4. The developer is proposing to improve the gravel portion of Lower Woodchuck Road to meet the new road standards.
5. The developer is not proposing to improve the paved portion of Lower Woodchuck Road (from Eight Mile Creek Road north to Slack Lane), but is proposing to pay a portion of the cost to improve this portion of Lower Woodchuck Road to County Standards. If there is a recovery contract in place, the developer is willing to improve the entire portion of Lower Woodchuck Road leading to the subdivision.
6. In an email dated June 21, 2006 (Exhibit A-4), David Ohnstad states, "The current 'design' and condition of the roadway may be nominally acceptable for current traffic volumes, but would not be appropriate for the potentially large volume of traffic generated by the Aspen Springs project. Significant increases in volume on this roadway, without improvement, may create unsafe conditions for current users as well as new residents." To mitigate impacts on public health and safety, and to ensure proper conditions for future users of the roadway, the applicant shall improve the paved portion of Lower Woodchuck Road, in addition to the gravel portion, to meet the County road standards, as amended August 4, 2005, prior to the final plat approval of Phase 1 (Condition 13).
7. According to Section 8-1-11 of the Ravalli County Subdivision Regulations, variances will expire unless the final plat of the first phase is filed within 30 months of subdivision approval.

**Conclusion of Law:**

With the mitigating condition, the applicant would be required to improve the entire length of Lower Woodchuck Road that provides access to Aspen Springs to meet the Road Standards, as amended August 4, 2005. This would mitigate impacts on public health and safety.



**B. The conditions on which the request for a variance is based are unique to the property on which the variance is sought and are not applicable generally to other property.**

Finding of Fact:

The Ravalli County Subdivision Regulations were amended August 4, 2005. The Aspen Springs subdivision was submitted on June 17, 2005.

Conclusion of Law:

The conditions upon which the variance is proposed are somewhat unique to the property.

**C. Physical conditions, such as topography or parcel shape, prevents the applicants from meeting the strict letter of these regulations. These conditions shall not result from the past actions of the land's current or previous owner(s).**

Finding of Fact:

There is currently a 60-foot wide easement on the entire portion of Lower Woodchuck Road leading to Aspen Springs.

Conclusion of Law:

There are no physical conditions preventing the applicant from improving Lower Woodchuck Road to meet the standards.

**D. The variance will not in any manner vary the provision of the zoning regulations or the Growth Policy.**

Findings of Fact:

1. Zoning does not apply to this property.
2. Relevant countywide provisions in the Ravalli County Growth Policy are outlined below. Provisions of the Ravalli County Growth Policy are followed by an analysis (bulleted points) of the variance request against these provisions.

**Countywide Goal 4:** Provide necessary infrastructure and public services to accommodate population growth and new development without undue impacts on the quality, quantity and cost of service to existing residents.

**Countywide Policy 4.4:** Improve and maintain existing infrastructure and public services.

**Countywide Policy 4.5:** Developers will be responsible for providing the infrastructure necessary within the development such as community water, sewage treatment and roads. A system of "nexus and proportionality" will govern external infrastructure costs attributable to the developer.

- The applicant is proposing to improve the gravel portion of Lower Woodchuck Road to meet the new road standards, but is not proposing to improve the paved portion, unless a recovery contract is in place.
- Aspen Springs is expected to contribute over 97% of the traffic on Lower Woodchuck Road, a substandard County-maintained road. To mitigate impacts on the existing road network, the applicant shall improve the entire length of Lower Woodchuck Road leading to Aspen Springs to meet the new road standards (Condition 13).

Conclusions of Law:

1. Zoning does not apply.
2. With the mitigating condition, the Growth Policy supports granting the variance request.



**E. The variance will not cause a substantial increase in public costs.**

Finding of Fact:

To mitigate impacts on public costs, the applicant shall improve Lower Woodchuck Road to meet the new road standards, with one design exception (Condition 13).

Conclusion of Law:

With the mitigating condition, there will not be an increase in costs to the public by granting this variance.

**VARIANCE REQUEST #8**

*(Staff Note on New Information: Staff determined the email from David Ohnstad that was considered new information by the BCC may affect Variance Request #8. A condition of approval of Variance Request #2 is that the Mountain View Drive access be improved to a primary access with Phase 19 or the first phase east of the main drainage. The applicant would be required to improve the portion of Eight Mile Creek Road from Lower Woodchuck Road to Mountain View Drive to meet County Standards if this route was a primary access. The staff recommendation on Variance Request #8 has not changed due to the new information, but the findings of fact have been modified.)*

The applicant requested a variance from Section 5-4-5(b)(4) of the Ravalli County Subdivision Regulations, which requires that the portion of Eight Mile Creek Road that leads to Aspen Springs be reconstructed to meet County road standards prior to final plat approval because the subdivision has more than 21 lots. The applicant is proposing to pay the equivalent of the pro rata share (57%) of the cost of improvements to Eight Mile Creek Road from Eastside Highway to Lower Woodchuck Road (\$43,981) based on current traffic projections and estimated cost of improvements. The road contribution is proposed to be paid proportionately at the final plat of each phase based on the number of lots in each phase. If there is a recovery contract in place, the developer is willing to improve the portion of Eight Mile Creek from Eastside Highway to Lower Woodchuck Road.

**Compliance with Review Criteria**

**A. The granting of the variance will not be substantially detrimental to the public health, safety or general welfare or injurious to other adjoining properties.**

Findings of Fact:

1. According to the application, Aspen Springs will generate 5,866 trips per day to the portion of Eight Mile Creek Road from Eastside to Lower Woodchuck Road, or an estimated 57% of the traffic load, assuming that a number of proposed subdivisions are approved and filed.
2. The applicant requested a variance from Section 5-4-5(b)(4) of the Ravalli County Subdivision Regulations, which requires that Eight Mile Creek Road be reconstructed to meet the County road standards in place at the time of submittal prior to final plat approval because the subdivision has more than 21 lots. Although the variance only refers to the north-south portion of Eight Mile Creek Road, with the requirement for a second access to the subdivision at Phase 19, the subdivider will be responsible for improvements to Eight Mile Creek Road to the intersection of Mountain View Drive and Eight Mile Creek Road. This portion of Eight Mile Creek Road has not been figured into the proposed mitigation.
3. To mitigate impacts of granting the variance, the applicant is proposing to pay the equivalent of the pro rata share (57%) of the cost of improvements to Eight Mile Creek Road (\$43,981) based on current traffic projections and estimated cost of improvements. The actual pro rata calculation required under the Subdivision Regulations is based on figures determined at final plat approval. If there is a recovery contract in place, the developer is willing to improve the portion of Eight Mile Creek from Eastside Highway to Lower Woodchuck Road.



4. The County Road Supervisor made the following comment (Exhibit A-5), "The granting of this variance **may prove detrimental** to the public health, safety or general welfare or injurious to other adjoining properties. The N/S segment of Eight Mile Creek Road is functionally classified as a Major Collector roadway with a current ADT of 2113 and currently serves as the only access for ranches and other property in the Lower Woodchuck corridor. The current average Pavement Condition Index for this segment of Eight Mile Creek Road is six (on a ten scale). The current "design" and condition of the roadway are not sufficient for the current level of traffic. If the traffic levels were (more than doubled) as a result of this project, without improvements to the roadway, current users as well as new residents may be subject to compromised safety. Also, the current design of the intersection of Eight Mile Creek Road and Lower Woodchuck Road would not safely accommodate the significantly increased traffic volumes arising from this project."
5. According to Section 8-1-11 of the Ravalli County Subdivision Regulations, variances will expire unless the final plat of the first phase is filed within 30 months of subdivision approval.

Conclusion of Law:

Granting the variance will have adverse impacts on the public health and safety and adjoining property owners.

**B. The conditions on which the request for a variance is based are unique to the property on which the variance is sought and are not applicable generally to other property.**

Findings of Fact:

1. The application states that the proposal is unique because it is a master planned community and it is not economically feasible or fair to place the burden of improving Eight Mile Creek Road on this developer.
2. No conditions unique to the property were identified as the basis of the variance request.
3. The County Road Supervisor noted that the conditions upon which the variance was granted are not unique to the property.

Conclusion of Law:

The conditions upon which the variance is proposed are not unique to the subject property.

**C. Physical conditions, such as topography or parcel shape, prevent the applicant from meeting the strict letter of these regulations. These conditions shall not result from the past actions of the land's current or previous owner(s).**

Findings of Fact:

1. The application states there are no physical conditions that prevent the applicant from meeting the strict letter of the regulations. It argues that paying the equivalent of the pro rated share of the cost of improving Eight Mile Creek Road with the filing of each phase, based on the figures estimated at preliminary plat review, is more logical.
2. No physical conditions have been identified that prevent the applicant from meeting the strict letter of these regulations.
3. The County Road Supervisor stated the physical conditions do not prevent the applicant from meeting the strict letter of the regulations.

Conclusion of Law:

The physical conditions of the property do not prevent the applicant from meeting the strict letter of the regulations.



**D. The variance will not in any manner vary the provisions of the zoning regulations or the Growth Policy.**

Findings of Fact:

1. The property is not zoned.
2. Relevant countywide provisions in the Ravalli County Growth Policy are outlined below. Provisions of the Ravalli County Growth Policy are followed by an analysis (bulleted points) of the variance request against these provisions.

**Countywide Goal 4:** Provide necessary infrastructure and public services to accommodate population growth and new development without undue impacts on the quality, quantity and cost of service to existing residents.

**Countywide Policy 4.1:** Encourage development that will minimize or avoid additional costs to existing taxpayers.

**Countywide Policy 4.2:** Consider cumulative impacts of development.

**Countywide Policy 4.5:** Developers will be responsible for providing the infrastructure necessary within the development such as community water, sewage treatment and roads. A system of "nexus and proportionality" will govern external infrastructure costs attributable to the developer.

- This section of the Ravalli County Subdivision Regulations was adopted by the Board of County Commissioners in August of 2005, after the Growth Policy was adopted.
- The proposed mitigation could be argued to meet Policy 4.5; however, without full payment of the pro rata equivalent it will be difficult to ensure the actual improvements are made to Eight Mile Creek Road, in part due to the fact that the phasing variance means the County cannot wait until the full contribution is made because it will not be made within the 7 year time frame. Furthermore, the proposal is to base the pro rata equivalent on the current cost of improvements and traffic loads; however, the true proportionality test would require that the cost estimates and traffic counts be completed with each phase.

Conclusion of Law:

Zoning does not apply and the Growth Policy provisions both support and reject granting the variance request.

**E. The variance will not cause a substantial increase in public costs.**

Findings of Fact:

1. The application states the variance will not result in increases to public costs.
2. The County Road Supervisor stated, "**The variance will cause a substantial increase in public costs.** The roadway will need to be improved in order to support the additional demand placed upon it by the proposed subdivision. Absent the project owner making those improvements, upon the arrival of subdivision residents, and given that the roadway is a county-operated facility, the public would be faced with the potential of increasing the level of service on the roadway to satisfy that added demand."

Conclusion of Law:

Granting the variance will increase public costs.





## UPDATED REQUEST FOR COMMISSION ACTION

OG-06-10-1135

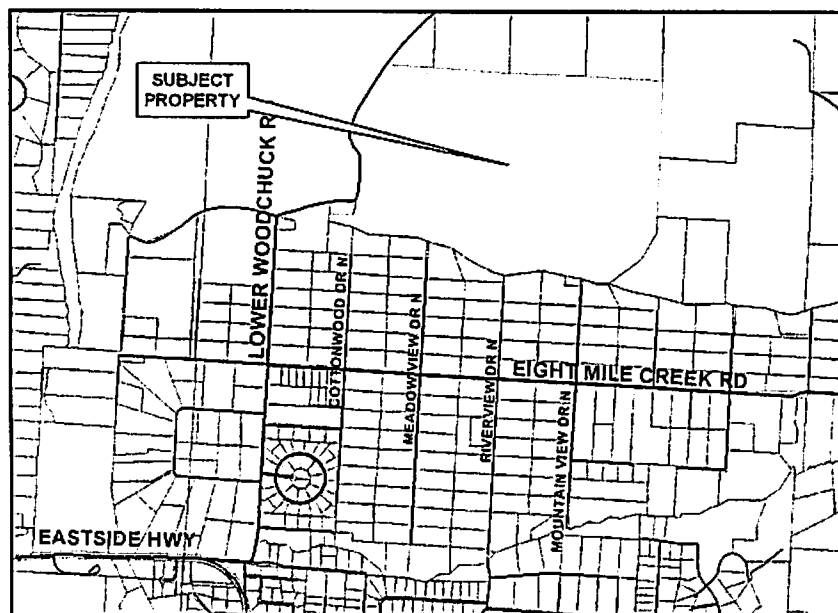
Meeting: October 16, 2006 at 6:00 p.m. at the First Interstate Center  
Request: To act on the Aspen Springs Major Subdivision and Eight Variance Requests.  
Staff Note: *The RCA was updated to clarify that the Planning Board had originally recommended a latecomer's agreement, so that the developer would be partially reimbursed for the improvements to Lower Woodchuck Road and Eight Mile Creek Road by future developments accessing off those roads (Variances #7 and #8). The Planning Board did not change their recommendation on Variances #7 or #8, so the recommendation has been added to the appropriate motions. The additions are highlighted in gray.*

### I. ACTION REQUESTED

This is a request from the applicant, Wesmont Builders/Developers, Inc., represented by WGM Group, Inc., to approve the **Aspen Springs Major Subdivision and Eight Variance Requests**.

### II. BACKGROUND

Aspen Springs is a 643-lot (671 maximum units including condominiums) subdivision of approximately 392 acres located northeast of Florence off Lower Woodchuck Road near the border of Ravalli County with Missoula County. The project is proposed to be completed in 33 phases over 10 to 20 years. The proposed density at build-out is one unit per 0.58 acres and, according to the application, the average lot size of the residential lots is 10,466 square feet, or 0.24 acres. A total of 163 acres are proposed to be open space.



**Map 1: Location Map**  
(Source Data: Ravalli County Planning Department)



The BCC reviewed the public comments submitted after the first public hearing for the Aspen Springs Subdivision and found that some of the public comments constituted information under (2)(b) of Section 76-3-615, MCA, which is new information that has never been submitted or considered during a public hearing. They also determined that some of the new information was both relevant and credible, requiring a subsequent public hearing for public review of the new information. The following pieces of information were determined to be new information, relevant, and credible by the BCC:

1. Test well statistics submitted during the applicant's presentation at the BCC Meeting on August 22, 2006.
2. An email between David Ohnstad, Ravalli County Road Superintendent, and Ryan Salisbury, WGM Group, Inc. dated August 17, 2006.
3. Demographic data within the *Draft of Impact Fees to Fund Growth-Related Capital Improvements for the Florence-Carlton School District* by TischlerBise dated August 8, 2006.

The purpose of the second public hearing before the Planning Board was to collect public comment on the new information and for the Planning Board to make a recommendation on whether or not the new information affects the recommended findings and conclusions that the BCC will rely upon in making its decision on the proposed subdivision and variance requests.

This RCA outlines the Planning Board's analysis of how the new information impacts the findings, conclusions, and recommendations that were previously made to the BCC.

In regards to the variance requests, the Planning Board has changed its recommendation for Variance #2, which was the requirement for a road connection through the Riverview Orchards Subdivision. The Planning Board now recommends approval of this variance, subject to Conditions 5, 6, and 7. When the Level of Service (LOS) on Lower Woodchuck Road falls below LOS "A", the emergency route via Mountain View Drive shall be constructed to meet AASHTO Standards. AASHTO Standards are slightly different than the County Subdivision Regulations because the AASHTO Standards do not address easement width. This would allow Mountain View Drive to have a temporary 40-foot wide easement. Prior to the final plat of Phase 19 or the first phase east of the main drainage, the applicant shall improve the temporary emergency route to be a primary access. This will require that the internal roads leading to Mountain View Drive, Mountain View Drive, and the portion of Eight Mile Creek from Lower Woodchuck Road to Mountain View Drive be improved to meet the new road standards. *Please note: Since the subdivision was submitted prior to the adoption of the new road standards, conditional approval of this variance as recommended by staff and the Planning Board will require the applicant to request a variance to allow Mountain View Drive to meet the new road standards.*

The Planning Board had previously combined Variances #7 and #8 and recommended conditional approval of the variances, with the condition that the portions of Lower Woodchuck Road and Eight Mile Creek Road leading to the subdivision meet the new road standards, as amended August 4, 2005. At the subsequent public hearing, the Planning Board decided to separate Variances #7 and #8, but did not change their recommendations. There has been confusion about whether or not the portion of Eight Mile Creek Road from Lower Woodchuck Road to Mountain View Drive is covered under Variance #8. In previous staff reports, staff noted that this portion of Eight Mile Creek Road was not covered under Variance #8. Upon further review by staff and legal counsel, staff has determined that the portion of Eight Mile Creek Road from Lower Woodchuck Road to Mountain View Drive is covered under Variance #8. With Condition 6 of approval for Variances #2 and #8, this portion of Eight Mile Creek Road will be improved prior to the final plat of Phase 19 or the first phase east of the main drainage.



In regards to the subdivision proposal, the Planning Board did not change their recommendation. Planning Staff made substantial changes to the findings and conclusions in the staff report and ultimately recommended denial of the subdivision because no new information can be submitted to address major impacts to wildlife and wildlife habitat, local services, and public health and safety (see Staff Report for Second Public Hearing on New Information).

*Staff recommended conditional approval of Variances #1, #2, #3, #4, #6, and #7, approval of Variance #5, and denial of Variance #8. Staff recommended denial on the subdivision.*

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### III. NEW INFORMATION THAT CANNOT BE CONSIDERED

The Planning Department received the following four public comments after the BCC Meeting on August 23, 2006. The comments have information that has not been entered into the record.

1. A Letter from Landworks Consulting and Design, Inc. to Dwane Kailey with the Montana Department of Transportation (MDT) dated August 25, 2006 regarding a meeting to discuss the impacts of large subdivisions on State Highways. (Attachment H of the September 27, 2006 Planning Board Meeting Minutes)
2. An email dated September 6, 2006 from Joyce Owen regarding a fire on the Aspen Springs property on August 29, 2006. (Attachment H of the September 27, 2006 Planning Board Meeting Minutes)
3. A letter from Philip Maechling dated September 26, 2006 comparing communities in Ravalli County that have multiple routes of ingress/egress to Aspen Springs, which has one proposed route of primary ingress/egress. (Attachment D of the September 27, 2006 Planning Board Meeting Minutes)
4. A fax from Cheryl Harkin dated September 27, 2006 with statistics from the State Highway Traffic Office at MDT supporting comments made at the BCC Meeting on August 22, 2006. (Attachment G of the September 27, 2006 Planning Board Meeting Minutes)

The County Attorney's Office has advised that per MCA 76-3-615 this information cannot be considered in the recommendations by the Planning Board and decisions by the BCC because it was submitted after the BCC Meeting on August 23, 2006.

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### IV. PLANNING BOARD RECOMMENDATIONS

The Ravalli County Planning Board held a public hearing on the new information on September 27, 2006 and made the following motions.

**Variance #1** (to allow 33 phases over 20 years) – The previous Planning Board recommendation was denial.

The Board made a motion that the new information does not affect the previous recommendation. **The Board voted 8-0 to confirm the denial of Variance #1, with one member abstaining.**

**Variance #2** (from providing a road connection to The Riverview Orchards Subdivision to the south) – The previous Planning Board recommendation was denial.

The Board made a motion that the new information does affect the previous recommendation and that Variance #2 be conditionally approved, based on the findings of fact and conclusions of law in the staff report and subject to the conditions in the staff report. **The Board voted 5-3 to approve this motion, with one member abstaining.**



**Variance #3** (to allow a 50-foot wide no-build zone centered on the high pressure gas line) – The previous Planning Board recommendation was conditional approval.

The Board made a motion that the new information does not affect the previous recommendation. **The Board voted 8-0 to confirm the conditional approval of Variance #3, with one member abstaining.**

**Variance #4** (to allow for lots with a building site area of less than 7,500 square feet) – The previous Planning Board recommendation was conditional approval.

The Board made a motion that the new information does not affect the previous recommendation. **The Board voted 8-0 to confirm the conditional approval of Variance #4, with one member abstaining.**

**Variance #5** (to allow six flag lots) – The previous Planning Board recommendation was approval.

The Board made a motion that the new information does not affect the previous recommendation. **The Board voted 8-0 to confirm the approval of Variance #5, with one member abstaining.**

**Variance #6** (to allow on-site roads to be built to the County Standards, as amended August 4, 2005) – The previous Planning Board recommendation was conditional approval.

The Board made a motion that the new information does not affect the previous recommendation. **The Board voted 8-0 to confirm the conditional approval of Variance #6, with one member abstaining.**

**Variance #7** (from improving the portion of Lower Woodchuck Road leading to the subdivision to meet the road standards in place when the subdivision was submitted) – The Planning Board previously combined their review of Variances 7 and 8 and the previous recommendation was conditional approval, with the condition that the portions of Lower Woodchuck Road and Eight Mile Creek Road leading to the subdivision be improved to meet the new road standards prior to the final plat of the first phase. ~~The Planning Board also recommended that a latecomer's agreement be allowed by the BCC, if possible.~~

The Board decided to separate Variances #7 and #8. The Board made a motion that the new information does not affect the previous recommendation for Variance #7. **The Board voted 8-0 to confirm the conditional approval of Variance #7, with one member abstaining.**

**Variance #8** (from improving the portion of Eight Mile Creek Road leading to the subdivision to meet the road standards in place when the subdivision application was submitted) – The Planning Board previously combined their review of Variances 7 and 8 and the previous recommendation was conditional approval, with the condition that the portions of Lower Woodchuck Road and Eight Mile Creek Road leading to the subdivision be improved to meet the new road standards prior to the final plat of the first phase. ~~The Planning Board also recommended that a latecomer's agreement be allowed by the BCC, if possible.~~

The Board made a motion that the new information does not affect the previous recommendation for Variance #8. **The Board voted 7-0 to confirm the conditional approval of Variance #8, with two members abstaining.** *(Staff Note: With the conditional approval of Variance #2, the Planning Board is recommending that the portion of Eight Mile Creek Road from Lower Woodchuck Road to Mountain View Drive be improved to meet the new road standards prior to the final plat approval of Phase 19 or the first phase east of the main drainage. This is Condition 6 of the approval of Variances #2 and #8.*



*Improving the portion of Eight Mile Creek Road from Eastside Highway to Lower Woodchuck Road prior to the final plat of Phase 1 is Condition 14 of the approval for Variance #8)*

**Subdivision Proposal** – The Planning Board previously recommended denial.

The Board made a motion that the new information does not affect the previous recommendation for the subdivision. **The Board voted 7-0 to confirm the denial of the Aspen Springs Major Subdivision, with two members abstaining.**

*Comments from the meeting are contained in the record.*

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#### **V. PLANNING BOARD'S RECOMMENDED MOTIONS**

(Note: Changes to staff's recommended motions in the staff report for the second public hearing on the new information are in underline/~~strikeout~~.)

#### **VARIANCE REQUESTS**

1. That the variance request from Section 3-2-21 of the Ravalli County Subdivision Regulations to allow the developer to complete the project in 33 phases over 22 years with a phasing plan instead of two phases to be completed within four years, be ~~approved~~ **denied**, based on the ~~findings of fact and conclusions of law in the staff report and subject to the conditions in the staff report~~ review of the variance request against the five variance criteria.
2. That the variance request from Section 5-4-4(d) of the Ravalli County Subdivision Regulations, which requires that roads in a new development be connected to a right of way or easement in adjacent platted areas to allow for proper inter-neighborhood traffic flow, be **approved**, based on the findings of fact and conclusions of law in the staff report and subject to the conditions in the staff report.
3. That the variance request from Section 5-2-2(a)(13) of the Ravalli County Subdivision Regulations to allow a no-build zone of 50 feet centered on the high pressure gas line traversing the property instead of a 200-foot no-build zone, be **approved**, based on the findings of fact and conclusions of law in the staff report and subject to the conditions in the staff report.
4. That the variance request from Section 5-2-2(b)(2) of the Ravalli County Subdivision Regulations, which requires that each lot has a building site of at least 7,500 square feet, be **approved**, based on the findings of fact and conclusions of law in the staff report and subject to the conditions in the staff report.
5. That the variance request from Section 5-2-2(a)(7) of the Ravalli County Subdivision Regulations to allow for six flag lots, be **approved**, based on the findings of fact and conclusions of law in the staff report.
6. That the variance request from Article Four of Chapter Five of the Ravalli County Subdivision Regulations to allow the on-site roads to be reviewed under the new road standards, as amended August 4, 2005, be **approved**, based on the findings of fact and conclusions of law in the staff report and subject to the conditions in the staff report.
7. That the variance request from Article Four of Chapter Five of the Ravalli County Subdivision Regulations to allow the developers to improve the graveled portion of Lower Woodchuck Road to meet the new road standards and to pay a portion of the cost to improve the paved portion of Lower Woodchuck Road to meet the new standards, be **approved**, based on the findings of fact and conclusions of law in the staff report and subject to the conditions in the staff report. The



Planning Board also recommended that a latecomer's agreement be allowed by the BCC, if possible.

8. That the variance request from Section 5-4-5(b)(4) of the Ravalli County Subdivision Regulations, which requires that the portion of Eight Mile Creek Road leading to the property is improved to meet county standards, be ~~denied~~ approved, ~~based on the findings of fact and conclusions of law in the staff report~~ with the conditions that the portion of Eight Mile Creek Road from Eastside Highway to Lower Woodchuck Road is improved to meet the new road standards, as amended August 4, 2005 prior to the final plat of the first phase and that the portion of Eight Mile Creek Road from Lower Woodchuck Road to Mountain View Drive is improved to meet the new road standards prior to the final plat of Phase 19 or the first phase east of the main drainage. The Planning Board also recommended that a latecomer's agreement be allowed by the BCC, if possible.

#### SUBDIVISION PROPOSAL

That the Aspen Springs Major Subdivision, be ~~denied~~, ~~based on the findings of fact and conclusions of law in the staff report~~ primarily on the unmitigated impacts of the subdivision on local services and public health and safety.

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#### VI. PLANNING BOARD'S RECOMMENDED CONDITIONS

(Note: Changes to staff's recommended conditions in the staff report for the second public hearing on the new information are in underline/strikeout.)

- ~~1. The applicant shall construct temporary turnarounds with a turning radius of 50 feet and a compacted all-weather travel surface that can accommodate emergency services vehicles for the internal roads prior to the final plat approval for each phase, unless a permanent cul-de-sac or through-road is constructed. (Variance #1)~~
- ~~2. The proposed phasing plan shall be accepted and any changes to the order and dates of filing shall be submitted as a revised phasing plan(s) to the Board of County Commissioners for review and approval prior to the final plat approval of each phase. (Variance #1)~~
- ~~3. Easements for infrastructure necessary for each phase shall be provided for on the final plat of each phase. (Variance #1)~~
- ~~4. Infrastructure necessary for each phase shall be completed prior to filing each phase even if it is not scheduled to be finished until a future phase. (Variance #1)~~
5. Prior to the final plat of each phase, the applicant shall submit the Level of Service (LOS) for Lower Woodchuck Road. When the LOS has decreased below LOS "A", the internal subdivision roads leading to Mountain View Drive and Mountain View Drive shall be improved to meet the new road standards, as amended August 4, 2005 AASHTO Standards (Staff Note: The Planning Board did not include this change in their motion, but staff had verbally updated the staff report to follow the Road Department's recommendation that the emergency route meet AASHTO standards instead of County Standards. This would allow for Mountain View Drive to have a 40-foot wide easement until it is constructed to be a primary access prior to the final plat of Phase 19 or the first phase east of the drainage.), to provide for an emergency route prior to the final plat of the phase filed after the LOS has decreased below LOS "A". An emergency access only barricade shall be installed and approved by the Ravalli County Road and Bridge Department prior to the final plat approval of the phase when road improvements for the emergency route are required. (Variance #2)



6. The emergency access through Mountain View Drive shall become a primary route prior to the final plat approval of Phase 19 or the first phase east of the main drainage. Mountain View Drive and Eight Mile Creek Road from Lower Woodchuck Road to Mountain View Drive shall be improved to meet the new road standards, as adopted August 4, 2005, and the emergency access only barricade shall be removed prior to the final plat approval of Phase 19 or the first phase east of the main drainage. (*Variances #2 and #8*) (*Staff Note: Since the Aspen Springs Subdivision was submitted under the previous road standards, the applicant will need to request a variance to allow Mountain View Drive to meet the new road standards. In order to meet Condition 6, the variance for Mountain View Drive will need to be approved prior to the final plat of Phase 19 or the first phase east of the main drainage.*)
7. The internal subdivision road connecting to Mountain View Drive shall be named Mountain View Drive on all applicable final plats. (*Variance #2*)
8. A 50-foot wide no-build zone centered on the high pressure gas line traversing the western portion of Aspen Springs shall be shown on the final plat of each phase, as applicable. (*Variance #3*)
9. The applicant shall submit a letter from NorthWestern Energy (NWE) stating that the development, including street and utility crossings of the high pressure gas line and drainfields in close proximity to the gas line, will not pose a greater risk to public health and safety than what existed on the property prior to development and that the Right-of-Way Development Provisions have been signed by the developer prior to the final plat approval of the first phase. (*Variance #3*)
10. A document entitled "Notifications to Future Property Owners" that includes the following notification that will apply to the entire subdivision shall be included in the submittal of the final plat for the first phase to the Planning Department and filed with the final plat:

**Notification of Proximity to Natural Gas Supply Line, Easement and No-Build Zone.** An 8" diameter natural gas main supply line is buried within a 50-foot wide easement and traverses the western portion of Aspen Springs, as shown on the filed subdivision plat. The final subdivision plat identifies a 50-foot wide no-build zone centered on the gas line, which applies to residential, commercial and/or industrial structures. Northwestern Energy has the authority and jurisdiction to install, operate and maintain the existing natural gas pipeline traversing this subdivision in accordance with the Department of Transportation's Code of Federal Regulations and the standards within the Gas Transmission Right-of-Way Development Provisions. For further information regarding the gas line, please contact the Northwestern Energy Company, 1140 South First Street, Hamilton, Montana, 59840, (406) 542-5970. (*Variance #3*)

11. Protective covenants for the entire Aspen Springs Subdivision shall be submitted with the final plat for the first phase that include the following provisions:

**Side Yard Setbacks.** To prevent the spread of fire, structures shall be set back a minimum of five feet from side yard property boundaries. (*Variance #4*)

**Amendment.** The covenants filed with the final plat shall state that written Governing Body approval shall be required for amendments to provisions of the covenants that were required to be included as a condition of subdivision approval.

12. The applicant shall construct all internal roads to meet the County road standards, as amended August 4, 2005, (*Variance #6*)



13. The developer shall reconstruct Lower Woodchuck Road from Eight Mile Creek Road north to the last northern access of the subdivision to meet County Standards, as amended August 4, 2005, prior to final plat approval of the first phase. (*Variance #7*)
14. The developer shall reconstruct the portion of Eight Mile Creek Road from Eastside Highway to Lower Woodchuck Road to meet County Standards, as amended August 4, 2005, prior to the final plat approval of the first phase. (*Variance #8*)

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<b>REMAINING ISSUES:</b>	None
<b>ATTACHMENTS:</b>	Updated Staff Report for the second public hearing on the new information Planning Board Meeting Minutes from the September 27, 2006 Public Hearing and Attachments Public Comments submitted at the September 27, 2006 Public Hearing
<b>STAFF:</b>	Renee Van Hoven <i>rw</i>
<b>DATE:</b>	October 12, 2006



## ATTACHMENT F

Five Criteria for Review of Subdivision Variance Requests

1. The granting of the variance will not be substantially detrimental to the public health, safety or general welfare or injurious to other adjoining properties.

Findings based on substantial competent evidence:

Agree

Disagree

2. The conditions on which the request for a variance is based are unique to the property on which the variance is sought and are not applicable generally to other property.

Findings based on substantial competent evidence:

Agree

Disagree

3. Physical conditions, such as topography or parcel shape, prevent the applicant from meeting the strict letter of these regulations. These conditions shall not result from the past actions of the land's current or previous owner(s).

Findings based on substantial competent evidence:

Agree

Disagree

4. The variance will not in any manner vary the provision of the zoning regulations or the Growth Policy.

Findings based on substantial competent evidence:

Agree

Disagree

5. The variance will not cause a substantial increase in public costs.

Findings based on substantial competent evidence:

Agree

Disagree

OVERALL FINDINGS BASED ON SUBSTANTIAL COMPETENT EVIDENCE:

AGREE

DISAGREE



RAVALLI COUNTY  
PLANNING BOARD ME  
VOTE SHEET

ATTACHMENT G

Variance #1 -  
Phasing

DATE: 10/16/06

SUBDIVISION: Aspen Springs

Motion Betty

2nd Greg

RECOMMENDATION: APPROVE APPROVE WITH CONDITIONS DENY

CONDITIONS: \_\_\_\_\_

BOARD MEMBER	AGREE	DISAGREE	ABSTAINED	REASON
Chilcott, Greg	X			
Lund, Betty	X			
Thompson, Alan		X		



## ATTACHMENT H

Five Criteria for Review of Subdivision Variance Requests

1. The granting of the variance will not be substantially detrimental to the public health, safety or general welfare or injurious to other adjoining properties.

Findings based on substantial competent evidence:

Agree

Disagree

B-A  
A-D  
G-D

2. The conditions on which the request for a variance is based are unique to the property on which the variance is sought and are not applicable generally to other property.

Findings based on substantial competent evidence:

Agree

Disagree

B-D  
A-D  
G-D

3. Physical conditions, such as topography or parcel shape, prevent the applicant from meeting the strict letter of these regulations. These conditions shall not result from the past actions of the land's current or previous owner(s).

Findings based on substantial competent evidence:

Agree

Disagree

B-D  
A-D  
G-D

4. The variance will not in any manner vary the provision of the zoning regulations or the Growth Policy.

Findings based on substantial competent evidence:

Agree

Disagree

B-A  
A-D  
G-D

5. The variance will not cause a substantial increase in public costs.

Findings based on substantial competent evidence:

Agree

Disagree

B-A  
A-D  
G- no conclusion

OVERALL FINDINGS BASED ON SUBSTANTIAL COMPETENT EVIDENCE:

AGREE

DISAGREE



RAVALLI COUNTY  
PLANNING BOARD MEETING  
VOTE SHEET

Variance #2  
Road connection  
to the South

ATTACHMENT I

DATE: 10/16/06

SUBDIVISION: Aspen Springs

Motion Alan

2nd Greg

RECOMMENDATION:

APPROVE

APPROVE WITH CONDITIONS

DENY

CONDITIONS:

BOARD MEMBER	AGREE	DISAGREE	ABSTAINED	REASON
Chilcott, Greg	X			
Lund, Betty		X		
Thompson, Alan	X			



RAVALLI COUNTY  
PLANNING BOARD MEETING  
VOTE SHEET

Variance #3  
no build zone over  
gas line

ATTACHMENT J

DATE: 10/16/06

SUBDIVISION: Aspen Springs

Motion Alan

2nd Betty

RECOMMENDATION: APPROVE APPROVE WITH CONDITIONS DENY

CONDITIONS: \_\_\_\_\_

BOARD MEMBER	AGREE	DISAGREE	ABSTAINED	REASON
Chilcott, Greg	X			
Lund, Betty	X			
Thompson, Alan	X			



Variance #4  
Lot size

RAVALLI COUNTY  
PLANNING BOARD MEETING  
VOTE SHEET

ATTACHMENT K

DATE: 10/16/06

SUBDIVISION: Aspen Springs

Motion Betty

2nd Alan

RECOMMENDATION: APPROVE APPROVE WITH CONDITIONS DENY

CONDITIONS:

BOARD MEMBER	AGREE	DISAGREE	ABSTAINED	REASON
Chilcott, Greg	X			
Lund, Betty	X			
Thompson, Alan	X			



Variance #5  
Flag lots

RAVALLI COUNTY  
PLANNING BOARD MEETING  
VOTE SHEET

ATTACHMENT L

DATE: 10/16/06

SUBDIVISION: Aspen Springs

Motion Alan

2nd Betty

RECOMMENDATION: APPROVE APPROVE WITH CONDITIONS DENY

CONDITIONS: \_\_\_\_\_

BOARD MEMBER	AGREE	DISAGREE	ABSTAINED	REASON
Chilcott, Greg	X			
Lund, Betty	X			
Thompson, Alan	X			



Variance #10  
On-site road  
Standards

RAVALLI COUNTY  
PLANNING BOARD MEETING  
VOTE SHEET

ATTACHMENT M

DATE: 10/16/06

SUBDIVISION: Aspen Springs

Motion Alan

2nd Betty

RECOMMENDATION: APPROVE APPROVE WITH CONDITIONS DENY

CONDITIONS: \_\_\_\_\_

BOARD MEMBER	AGREE	DISAGREE	ABSTAINED	REASON
Chilcott, Greg	X			
Lund, Betty	X			
Thompson, Alan	X			



# ATTACHMENT N

## Five Criteria for Review of Subdivision Variance Requests

1. The granting of the variance will not be substantially detrimental to the public health, safety or general welfare or injurious to other adjoining properties.

**Findings based on substantial competent evidence:**

Agree

Disagree

B  
A  
G

2. The conditions on which the request for a variance is based are unique to the property on which the variance is sought and are not applicable generally to other property.

**Findings based on substantial competent evidence:**

Agree

Disagree

3. Physical conditions, such as topography or parcel shape, prevent the applicant from meeting the strict letter of these regulations. These conditions shall not result from the past actions of the land's current or previous owner(s).

**Findings based on substantial competent evidence:**

Agree

Disagree

4. The variance will not in any manner vary the provision of the zoning regulations or the Growth Policy.

**Findings based on substantial competent evidence:**

Agree

Disagree

5. The variance will not cause a substantial increase in public costs.

**Findings based on substantial competent evidence:**

Agree

Disagree

**OVERALL FINDINGS BASED ON SUBSTANTIAL COMPETENT EVIDENCE:**

AGREE

DISAGREE



RAVALLI COUNTY  
PLANNING BOARD MEETING  
VOTE SHEET

Variance #7 -  
off-site road  
Standards -  
Lower Woodchuck  
Rd.

DATE: 10/16/06

SUBDIVISION: Aspen Springs

ATTACHMENT O

Motion Alan

2nd Betty

RECOMMENDATION:                      APPROVE                      APPROVE WITH CONDITIONS                      DENY

CONDITIONS: \_\_\_\_\_

BOARD MEMBER	AGREE	DISAGREE	ABSTAINED	REASON
Chilcott, Greg	X			
Lund, Betty	X			
Thompson, Alan	X			



RAVALLI COUNTY  
PLANNING BOARD MEETING  
VOTE SHEET

Variance #8  
off site Rd.  
Standards -  
Eight mile  
Week Rd.

DATE: 10/16/06 ATTACHMENT P

SUBDIVISION: Aspen Springs

Motion Alan

2nd Betty

RECOMMENDATION: APPROVE APPROVE WITH CONDITIONS DENY

CONDITIONS: \_\_\_\_\_

BOARD MEMBER	AGREE	DISAGREE	ABSTAINED	REASON
Chilcott, Greg	X			
Lund, Betty	X			
Thompson, Alan	X			

Amendment Motion Betty  
2nd Alan  
G X  
B X  
A X

## ATTACHMENT Q

1. Effects on Agriculture, including effects on the agricultural sector, loss of agricultural ground and effects on surrounding agricultural activities or practices.  

<b>Significant</b>	<b>Non-Significant</b>	<b>Why</b>
--------------------	------------------------	------------
2. Effects on Agricultural water-user facilities.  

<b>Significant</b>	<b>Non-Significant</b>	<b>Why</b>
--------------------	------------------------	------------
3. ~~Effects on local services~~, including public road system, police and fire protection, utilities and public schools.  

<b>Significant</b>	<b>Non-Significant</b>	<b>Why</b>
--------------------	------------------------	------------
4. Effects on the natural environment, including ground water contamination, riparian/wetland areas, soil erosion, vegetation and air pollution and noxious weeds.  

<b>Significant</b>	<b>Non-Significant</b>	<b>Why</b>
--------------------	------------------------	------------
5. Effects on wildlife and wildlife habitat, including fisheries and mammals.  

<b>Significant</b>	<b>Non-Significant</b>	<b>Why</b>
--------------------	------------------------	------------
6. Effects on public health and safety, including sanitary issues such as sewage disposal and ground water contamination, police and fire protection, wildland fire hazard, traffic safety and the presence of other known hazards (onsite and offsite) such as high-pressure natural gas lines, airports, railroads, overhead power lines, industrial activities, mining activities, irrigation ditches and defined dam inundation areas.  

<b>Significant</b>	<b>Non-Significant</b>	<b>Why</b>
--------------------	------------------------	------------



subdivision  
proposal

RAVALLI COUNTY  
PLANNING BOARD MEETING  
VOTE SHEET

ATTACHMENT R

DATE: 10/16/06

SUBDIVISION: Aspen Springs

Motion Alan

2nd Greg

RECOMMENDATION:

APPROVE

APPROVE WITH CONDITIONS

DENY

CONDITIONS:

BOARD MEMBER	AGREE	DISAGREE	ABSTAINED	REASON
Chilcott, Greg	X			
Lund, Betty		X		
Thompson, Alan	X			

# PUBLIC HEARING/MEETING SIGN-IN SHEET

Please write legibly.

DATE: October 16, 2000

SUBDIVISION: Aspen Springs (Westmont Builders/Developers, Inc.)

NAME	CONTACT INFORMATION
RYAN SALISBURY	WAM group
Kathleen Russell	
Greg Leonard	New West. mt 829-1725
Mary Lu Bailey	
Clayton Mayan	Florence Mt. 273-7717
Jason Rice	Landmark
Chris Linkenhoker	239-6791 Hamilton
Willie Schrock	207-0400 Concocks
Grace & Werner Will	777-2291 Steen
SHARON McEwan	777-3609
DENNIS DRUFFEL	240-1260 HSCA.
Karen Thompson	531-3104 Victor
KEN & ANN MARTIN	273-6249 Florence
Steve & Bonnie Arno	273 6271 Florence
Jim Shuster 277	0,400 Florence
Sharon Schwedes	273-2140
Nandee Truett	273-3343
Jody Truett	273-3343
SHARON MILANOS	777 0187

BEN HILLICROSS  
Cand. Jerke

777.0187  
2-13-0002



**Please write legibly.**

**SUBDIVISION:**

[illegible]

**Please write legibly.**

SUBDIVISION: Aspen Springs (Westmont Builders/Developers, Inc.)

[illegible]